

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-CR-00337-RJC-DSC

USA)
)
)
 v.) ORDER
)
 CORVAIN T. COOPER)
)

THIS MATTER is before the Court on the government's Notice of Intent to Introduce 404(b) Evidence, (Doc. No. 279); the defendant's Motion in Limine regarding an uncharged firearm, (Doc. No. 318); and the government's responses, (Doc. Nos. 278, 320).

While the 404(b) notice cites numerous older cases decided by the Fourth Circuit and others regarding the admissibility of other act evidence under Federal Rule of Evidence 404(b), it fails to analyze the alleged facts of this case in light of recent published decisions reflecting an evolution in the circuit’s jurisprudence. See e.g. United States v. Johnson, 617 F.3d 286, 296 (4th Cir. 2010) (“Our Circuit’s jurisprudence concerning the application of Rule 404(b) has evolved by addressing the tension in cases involving evidence of prior drug transactions.”). Here, the need to give attention to the circuit’s current approach is heightened since the alleged other act evidence involves marijuana trafficking, which is also charged in the indictment, and the possession of an uncharged firearm. (Doc. No. 278: Response at 1; Doc. No. 279: Notice at 1-2).

IT IS, THEREFORE, ORDERED that the government shall file a supplement to its notice and responses before October 15, 2013, addressing at least Johnson; United States v. Lespier, 725 F.3d 437 (4th Cir. 2013); United States v. McBride, 676 F.3d 385 (4th Cir. 2012); and United States v. Penniegraft, 641 F.3d 566 (4th Cir. 2011).¹ (See e.g. Case No. 3:13-cr-107,

¹ The Court expects such cases to be addressed in future 404(b) notices filed by the government.

Doc. No. 45: Supplemental Notice). The defendant may, if he chooses, file a pleading before October 15 addressing the cases above.

Signed: October 10, 2013



Robert J. Conrad, Jr.
United States District Judge

